

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>1469 HOLLY STREET LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DENVER COUNTY BOARD OF COMMISSIONERS.</b></p>	<p><b>Docket No.: 61917</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on October 2, 2013, James R. Meurer and Debra A. Baumbach presiding. Ms. Marsha Jeen Mechanik appeared *pro se* on behalf of Petitioner. Respondent was represented by Charles T. Solomon, Esq. Petitioner is protesting the 2011 actual value of the subject property.

Subject property is described as follows:

**1469 Holly St  
Denver County Schedule No.: 06061-01-024-000**

The subject property consists of a mixed use residential and commercial duplex located south of Colfax Ave in the Bellevue subdivision of Denver. The duplex is a one story building originally constructed in 1932. The building consists of 1,720 square feet with each side of the duplex containing 860 square feet on the main floor and 556 of basement area. The south half of the duplex was converted into a medical office in 2007 and the other side remained residential use. The rear yard of the property contains a 360 square foot garage that was valued as a shed because of a lack of access off the alley. The property is zoned as MS-1 allowing for commercial or mixed use, where a building scale of 1-3 stories is desired. The site area contains 7,280 square feet and the property was considered to be in average condition as of the assessment date.

Petitioner is requesting an actual value of \$230,000 for the subject property and that the south one half of the duplex is classified as residential for tax year 2011. Respondent assigned a value of \$238,900 for the subject property for tax year 2011 with \$117,300 assigned to the commercial portion and \$121,600 assigned to the residential portion.

Petitioner's witness, Ms. Mechanik, testified there were several significant factors affecting the subject property that Respondent failed to adequately recognize. Ms. Mechanik argued that Respondent failed to give appropriate consideration to the illegal zoning change prohibiting Petitioner from accessing the garage off the alley, thereby precluding any use of the garage other than for a storage. Secondly, Ms. Mechanik contended Respondent incorrectly valued and classified the south half of the duplex as a commercial use for 2011. Ms. Mechanik argued her son Dr. Joseph Mechanik and her daughter-in-law were illegally operating their medical practice from the property without her consent and knowledge. Ms. Mechanik testified she only became aware they were using the property in 2008. A dispute ensued and a restraining order was issued prohibiting Ms. Mechanik from the property other than for maintenance issues. In May 2010, Ms. Mechanik proceeded with an eviction notice and, as the result, her son and daughter-in-law vacated the property in December 2010. Subsequently, the property was vacant as of January 1, 2011 and the locks were changed January 2, 2011.

Ms. Mechanik contended the subject property qualified for residential use for 2011 because the property was vacant on January 1, 2011 meeting the classification criteria. Respondent had incorrectly reported that the tenants had vacated the property in mid to late 2011 based on conversations with the former tenants who had no legal right to the use of the property. At no time the Assessor's Office had conversations with Ms. Mechanik as to the timeline of the subject's occupancy/use and as to the issues with the tenants. Ms. Mechanik testified that as of the assessment date, the property was vacant and was not used for commercial purposes. Therefore, the south half of the duplex should be valued and classified as residential.

Respondent presented the following indicators of value:

Market: \$121,600  
Income: \$117,300  
Cost: N/A

Respondent concluded to a total indicated value of \$238,900, concluding to a value of \$121,600 for the residential portion and \$117,300 for the commercial portion.

Respondent's witness, Mr. Larry George of the Denver County Assessor's Office, presented a market approach for the residential portion, including three comparable sales ranging in sales price from \$305,500 to \$399,000 including both units. The sales ranged in total size from 1,540 to 4,503 square feet and 770 to 1,126 square feet for each side. After adjustments were made, the sales ranged from \$127,377 to \$160,393 for each unit for a concluded value of \$121,600 based on the market approach.

Respondent presented an income approach for the commercial portion to derive a value of \$117,300 for the subject property. Respondent relied on direct capitalization model utilizing a stabilized rent of \$15.20 per square foot for a potential gross income of \$13,072. A long term vacancy and collection loss was estimated at 5% for an effective gross income of \$12,418. An expense ratio of 15% was estimated for a net operating income of \$10,555. The net operating income of \$10,555 was then capitalized at 9.00% overall rate resulting in an indicated value of \$117,300 based on the income approach.

Mr. George testified that in the valuation and classification process, the property is valued as it stands January 1<sup>st</sup> of each year at noon. He reviewed the property record information and found that there wasn't any "change in use permit" filed by Petitioner changing the use of the south half of the duplex back to residential or any other information indicating a change in use. Therefore, he classified and valued the south half of the duplex as commercial and the north half remained residential use.

Mr. George testified he had been contacted by the Mayor's Office regarding Petitioner's concerns over illegally denying access to the garage off the alley and classifying the south half of duplex as commercial use for 2011. Mr. George proceeded to further review the County records on the subject property. After extensive review, Mr. George concluded that the south half of the duplex was zoned for commercial use and had been used as a medical practice starting in 2007 and continued as such until mid to late 2011. Mr. George testified that the tenants moved out in mid to late 2011 based on conversations with Dr. Joseph Mechanik and his office manager. He then followed up reviewing the Secretary of State website for Synnergy Health Care, operating under Dr. Joseph Mechanik, in tracking any change in address. On October 24, 2011, Synnergy Health Care reported its address as 7180 Each Orchard Road in Centennial. Based on the timeline, the subject property had been occupied and used as commercial use during the relevant time period. On August 14, 2012, Petitioner filed a change in use permit requesting the medical practice portion of the subject be changed back to residential use.

Mr. George testified that he valued and considered the garage off the alley as a storage shed. The alley behind Petitioner's property has always been a "non-dedicated private alley" from the 1950's. Petitioner had no legal standing to use the alley. The storage shed was valued with the residential portion in the analysis (versus having it split out between the residential and commercial portion). Additionally, the basement area for both sides of the duplex was given no additional value and was considered as support areas for the above grade areas. The site area was divided so that half was assigned to the residential portion and the other half to the commercial portion.

Respondent assigned an actual value of \$238,900 to the subject property with \$117,300 assigned to the commercial portion and \$121,600 assigned to the residential portion.

The burden of proof is on Petitioner to show that Respondent's valuation is incorrect. *Bd. Of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005). Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued and classified for tax year 2011. The Board acknowledges Petitioner's frustration with the classification and valuation process. However, it is the responsibility of the taxpayer to notify the Assessor's Office of any change in use to the property each year. Based on the testimony and evidence presented, the Board was persuaded that Respondent accurately classified and valued the subject property for tax year 2011.

After careful consideration of the testimony and exhibits presented at the hearing, most weight was placed on Respondent's analysis. To begin with, as Respondent correctly stated, assessment date for all taxable property is January 1 of each year at noon. Section 39-1-105, C.R.S. The Board placed most emphasis on Respondent's testimony citing the October 24, 2011

date filed with the Secretary of State as to the change of address by Dr. Joseph Mechanik. In the valuation process for the residential portion, Respondent presented three comparable sales located within the subject's market area. Reasonable adjustments were made for all differences affecting the value indicating a supportable value. In addition, Respondent gave minimal value to the basement area that was valued as support area. The Board further concludes Respondent presented a supportable value conclusion for the commercial portion.

One of Petitioner's major concerns at the hearing was the lack of garage access from the alley and Respondent's value conclusion. Respondent correctly valued the garage area as storage shed and included that value with the residential portion. Based on Respondent's testimony, it is a "non-dedicated private alley", Petitioner does not have legal access at the request of the legal owner not because of a zoning change issued by the City and County of Denver.

### **ORDER:**

The petition is denied.

### **APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

**DATED and MAILED** this 29th day of October, 2013.

**BOARD OF ASSESSMENT APPEALS**



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James R. Meurer



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Debra A. Baumbach

I hereby certify that this is a true  
and correct copy of the decision of  
the Board of Assessment Appeals.



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Milla Lishchuk

